ject to the discretion of the court and must be exercised through its order. *In re City of Seattle*, 40 Wash. 450, 82 Pac. 740; *Cloak Co.* v. *Oreck*, 134 Minn. 464, 157 N. W. 327. Before the court will allow the appellant to withdraw its appeal, it must be satisfied that no prejudice will thereby result to the appellee. This prejudice may consist in the loss of some right to which appellee has become entitled by reason of the appeal. *Acequia Madre* v. *Meyer*, 17 N. M. 371, 128 Pac. 68; *Sweeney* v. *Coulter*, 109 Ky. 295, 58 S. W. 784. In the principal case, the court properly held that the appellant's statutory right is not absolute, but is merely declaratory of the right to dismiss which would have existed independently of the statute. Sufficient ground for denying the motion is to be found in the fact that the appeal gave the district court original jurisdiction by virtue of which it might have assessed larger damages for the appellee than those secured in the lower court. See *Yell* v. *Outlaw*, 14 Ark. 164, 165; *McKinley* v. *Wilmington, etc. Co.*, 7 Ill. App. 386, 390. On principle, stay of execution in itself, if it involves damage to the appellee, should bar appellant's right of dismissal.

ATTORNEYS — RELATION BETWEEN ATTORNEY AND CLIENT — ADVICE OF ATTORNEY TO A DESERTER AS ASSISTANCE UNDER A STATUTE. — The defendant, an attorney, was consulted by a sixteen year old deserter from the army, and by his father, who wished to secure the son's release from military service. The attorney advised the boy to remain away from the authorities, to leave the state, and if apprehended, to deny his identity. A federal statute made it a crime to "harbor, conceal, protect, or assist any soldier . . . who may have deserted" from the military service of the United States, "knowing him to have deserted" (35 STAT. AT L. 1097). The defendant was indicted under this statute, and from a verdict of guilty and judgment thereon he appealed. *Held*, that the judgment be reversed. *Firpo* v. *United States*, 52 Chicago Leg. News, 210 (Circ. Ct. App.).

The duty of an attorney toward his client is limited by a counter duty as an officer of the court not to perpetrate any fraud upon the court, nor to obstruct the administration of justice, nor to bring the court into contempt by advising a client to disobey its orders. *In re Dubose*, 109 Fed. 971; *Leber* v. *United States*, 170 Fed. 881. See 30 HARV. L. REV. 642. While the conduct of the attorney here was therefore unprofessional, he was not guilty of the crime charged unless the advice given was equivalent to assistance. Advice has been characterized as mere words, as distinguished from assistance, which implies some affirmative act in aid of the principal. *Wiley* v. *McRee*, 2 Jones (N. C.), 349. But an accessory has been defined as one who procures, advises, or assists. *United States* v. *Wilson*, 28 Fed. Cas. 699. And the test of whether one is an accessory seems to be the rendering of some personal help to the principal to elude punishment. *Loyd* v. *The State*, 42 Ga. 221. Advice which points out ways and means of escape may be far more valuable to a criminal than the loan of a horse or money, which will make the lender an accessory. Accordingly, such advice as was given in the principal case ought to have been held to constitute assistance, and to make the advising attorney guilty of the crime created by the statute.

ATTORNEYS — RELATION BETWEEN ATTORNEY AND CLIENT — PROCEEDING IN *QUO WARRANTO* DISMISSED BECAUSE STATE'S ATTORNEY DISQUALIFIED. — An information in the nature of *quo warranto* was filed in the name of the state, on the relation of third persons, by the state's attorney against the members of a board of education because of alleged irregularities in the establishment of the school district. The defendants pleaded that the now state's attorney had acted as their attorney in the organization of the school district and that he was estopped to present and file this information. A de-

murrer to the plea was sustained. The defendants appealed. *Held*, that the information be dismissed. *People ex. rel. Livers et al.* v. *Hanson et al.*, 125 N. E. 268 (Ill.).

For a discussion of this case, see NOTES, p. 848, *supra*.

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — RIGHT OF ACTION FOR TORT CAUSING PERSONAL AND PROPERTY DAMAGE. — The defendant so negligently discharged its duties under a contract to maintain the bankrupt's credit as a trader during his absence in the army that his estate was forced into bankruptcy and its assets depleted. The bankrupt and the trustee join as parties plaintiff, the former claiming for damage to his credit and business reputation, and the latter claiming for injury to the estate. *Held*, that both may recover. *Wilson & Another* v. *United Counties Bank, Ltd.*, [1920] A. C. 102 (House of Lords).

It is well settled that a right of action for personal injuries remains in the bankrupt, while one for property damage vests in the trustee. *Sibley* v. *Nason*, 196 Mass. 125, 81 N. E. 887. See BANKRUPTCY ACT 1898, §§ 70 *a* 5, 6. But where the same wrongful act causes both personal and property damage, the relative rights of the bankrupt and the trustee are as yet not well defined. An earlier English case took the view that the right should be confined to the party representing the interest chiefly damaged. *Rose* v. *Buckett*, [1901] 2 K. B. D. 449. See 15 HARV. L. REV. 229. Theoretically unsatisfactory, this is practically inapplicable where each interest has sustained material injury. In justice, both should be compensated, but the difficulty lies in apportioning the cause of action occasioned by the single tortious act. It would seem that the Bankruptcy Act established a right in the trustee, for in him are vested the bankrupt's "rights of action arising . . . from injury to his property." BANKRUPTCY ACT, §§ 70*a*, 6. If so, the bankrupt must proceed on the theory that the action is divisible to recover for the personal injury. Such a dual cause of action has been held divisible even outside of bankruptcy. *Brunsden* v. *Humphrey*, 14 Q. B. D. 141; *Reilly* v. *Sicilian, etc. Paving Co.*, 170 N. Y. 40, 62 N. E. 772. But see *Doran* v. *Cohen*, 147 Mass. 342, 17 N. E. 647; *Von Fragstein* v. *Windler*, 2 Mo. Ap. 598. And various *dicta* of the English courts in bankruptcy cases foreshadowed the decision in the principal case. *Rogers* v. *Spence*, 12 Cl. & F. 700, 720; *Beckham* v. *Drake*, 2 H. L. C. 578, 628. See also *Darley, etc. Co.* v. *Mitchell*, 11 A. C. 127, 144. Even though, in general, such a cause of action should be held indivisible, it would seem practically desirable to allow an apportionment between the bankrupt and his trustee under the special circumstances of bankruptcy. It is to be hoped that the American courts, as yet undecided, will follow the principal case, despite their varying views on the divisibility of actions. There are cases pointing the other way, however. See *Epstein* v. *Handverker*, 29 Okla. 337, 116 Pac. 789; *Remmers* v. *Remmers*, 217 Mo. 541, 117 S. W. 1117; *Sibley* v. *Nason*, *supra*.

BANKRUPTCY — PROPERTY PASSING TO THE TRUSTEE IN BANKRUPTCY — RIGHT TO RECOVER SECURITIES PLEDGED FOR A USURIOUS LOAN. — The defendant loaned money to a borrower at a usurious rate of interest. A statute permitted the borrower an action for the recovery of the securities without any tender of the loan. (1909 LAWS OF NEW YORK, c. 25, § 377.) The plaintiff, receiver in bankruptcy of the borrower, claims the same right. *Held*, that the defendant have judgment. *Rice* v. *Schneck*, 179 N. Y. Supp. 335.

The Bankruptcy Act provides that the assets of the bankrupt, including rights of action arising from contract and detention and injuries to property, shall pass to the trustee of the estate. BANKRUPTCY ACT OF 1898, § 70 *a* (6). Actions for fraud in inducing a sale or an acceptance of a contract will pass,